

New Turkish Commercial Code: Reform in Turkish Commercial and Company Law

The new Turkish Commercial Code numbered 6102 (the “New TCC”) was promulgated in the Official Gazette on February 14, 2011 and has entered into force as of July 1, 2012.

On the other hand, some of the provisions therein will be effective on different dates.

Accordingly, the provisions relating to websites to be opened by capital stock partnerships for information services will become effective as of July 1, 2013; and the provisions which require the audit of capital stock companies to be made in accordance with Turkish Auditing Standards, which are in line with International Standards of Auditing and financial reporting standards will become effective as of January 1, 2013.

For many people in Turkey, the new Turkish Commercial Code is formed with a modern evolution and reformist approach whereby Turkish commercial, financial and capital markets will be bound.

The new Turkish Commercial Code regulates the commercial undertakings, commercial companies, negotiable instruments, transportation operations, maritime law and insurance agreements.

The main reason for a new law was to integrate Turkish commercial law

with European Union Law besides creating an infrastructure based on transparency. On the other hand, the New TCC also implements the universally accepted financial reporting and auditing principles and contributes either to the democracy among the shareholders or to the use of information technology tools.

Amendments within the scope of the New TCC

The New TCC introduces material provisions regarding good management and internal and independent audit that are to be applied to all capital stock companies based on the corporate governance which is one of the dominant concepts of the New TCC.

Accordingly, full transparency is sought in the financial statements, boards of directors' annual reports, independent audits' reports, transactional auditors' reports and all audit reports of individual companies and group of companies. Flow of information, right to information and oversight over the boards of directors' reports are regulated under corporate governance regime in the New TCC.

There are many significant changes based on the abovementioned principles, some of them are as follows:

- List of the minority rights has been expanded.
- Privileged shares have been limited.
- Representation possibilities for group/s of shareholders and the minority in the boards of directors have been increased.
- The Capital Markets Board is provided with exclusive authority to regulate corporate governance.
- The reason for such authorization is to ensure that corporate governance remains dynamic and up-to-date.
- The boards of directors of publicly held companies are now obliged to publish corporate governance reports.

Obligation to create a website for Capital Stock Companies

Under the New TCC, audited capital stock companies are obliged to create a website within 3 months after registration of their incorporation; even if the company already has a website, it must allocate part for “information society” services. “Information Society” is defined in the New TCC as a society with access to information.

All information relevant to the company in which shareholders, minorities, creditors and stakeholders have an interest, documents and calls regarding General Assembly meetings, year-end and interim financial statements and merger and division balance sheets, all kinds of audit reports, all kinds of valuation reports, offers for exercising pre-emptive right, liquidation announcements, announcements related to action for cancellation shall be broadcasted online via company websites under the New TCC.

In addition, access to the web site shall be unrestricted and available to everyone and, to ensure the right to and possibility of access.

It should also be noted that pursuant to the New TCC, the content uploaded to the company websites shall be kept there for at least six months from the upload date; otherwise it will be deemed not to have been uploaded.

Single-Shareholder Companies enabled with

the New TCC

The New TCC also amended the formation of the companies established under name of Joint Stock Company (A.Ş.) and Limited Liability Company (L.Ş.).

This reform is considered to be satisfying a major need in Turkish Commercial Law. Accordingly, Single-Shareholder A.Ş. and Single-Partner L.Ş. can be incorporated under the new TCC. It should also be noted that this reform is adopted from the 12th Council Company Law Directive 89/667/EEC from European Union Law to Turkish Commercial Law.

If the shareholders/partners of an A.Ş. or a L.Ş. incorporated by and among multiple shareholders/partners drops to a single partner or shareholder, such company can legally continue its activities. If a company is incorporated with a single person, the legal form of the company, the name of the single person, trade name and address will be registered with the Trade Registry and duly announced. In case the number of shareholders/partners of a company is incorporated by and among multiple shareholders or partners drops to one for any reason, the company can continue to perform its business activities in the same manner and maintain its legal personality. This is a direct change from the current Turkish Commercial Code under which an action for dissolution must be commenced instead.

Moreover, a single shareholder or partner is also able to use all powers of the General Assembly and accordingly he/she is entitled to adopting resolutions in writing. On the other hand, all resolutions adopted on behalf of the General Assembly must be specified as resolutions of General Assembly.

Group of companies

regulated for the first time in Turkish Company Law

The notion of group of companies (“Group”) which describes the management of more than one capital stock company is regulated for the first time in Turkish Commercial law by the New TCC. This regulation was also significant in order to cover the loophole in Turkish Commercial Law.

Parent company sustaining the control and subsidiary company under control are clearly defined and accordingly, specified with the legal status and inter-company relations of these companies. The board of directors of parent and subsidiary companies are obliged to report their inter-relations annually pursuant to the New TCC. It is significant to note that there are several provisions under New TCC adopted in order to prevent the abuse of control by the Parent Company.

There are also some structural changes in terms of spin-off, split-up, merger and conversions of the capital companies under New TCC. Those provisions are mostly related to protection of the partners, the partnership creditors and the employees in order to secure their rights and credits in accordance with the provisions of the European Union’s Sixth Council Directive 82/891/EEC.

Changes with regard to commercial books

Furthermore, there are remarkable changes in the section related to commercial books. The rules related to provisions regarding the bookkeeping, opening balance sheet, financial statements, balance sheet principles, prohibition on capitalization, prepaid expenses and

deferred income, valuation, custody and disclosure are brand new.

Most significantly, regarding the commercial books, the New TCC does not include the use of commercial books as evidences in legal disputes. The reason for this change should be that such provisions are no longer in practice under any modern law. However, courts still may decide on the submission of commercial books.

It is also noteworthy that Turkish Accounting Standards Board is appointed pursuant to the New TCC as sole and exclusive authority to set and publish Turkish Accounting Standards.

Conclusion

No doubt, new audit provisions and abovementioned amendments under the New TCC will change the structure and organizational units of joint stock companies and limited liability companies. These changes conform to the new regulations adopted in the United States and the European Union. It is certain that this reform in Turkish Commercial and Company Law is going to make a substantial contribution to establishing trust in national and international markets for Turkey.

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